

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK GERMACK DDS, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE DENTISTS INSURANCE COMPANY,

Defendant.

CASE NO. C20-0661-JCC

ORDER

This matter comes before the Court on Plaintiff’s motion for stay of proceedings (Dkt. No. 12). Having thoroughly considered the parties’ briefing and the relevant record, the Court hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiff owns and operates a dentistry practice in Seattle, Washington. (Dkt. No. 12 at 1.) Due to the COVID-19 pandemic and government-ordered mandates, Plaintiff was one of many dentistry practices forced to shut down. (*Id.*) Plaintiff turned to Defendant, his insurer, for recovery of business interruption losses and was denied coverage. (*Id.*) On April 30, 2020, Plaintiff filed a class action complaint seeking a declaratory judgment and damages for breach of contract against Defendant. (Dkt. No. 1.)

A similarly situated group of plaintiffs nationwide have filed pleadings pursuant to 28

1 U.S.C. § 1407 in the Judicial Panel on Multidistrict Litigation (“JPML”), seeking to consolidate  
 2 and coordinate litigation in over 30 districts nationwide against insurers. (*See* Dkt. No. 12 at 2.)  
 3 On May 1, 2020, Plaintiff filed a notice of related action relating this action to the JPML matter,  
 4 and Plaintiff and Defendant filed notices of appearance with the JPML action on May 5 and 18,  
 5 respectively. (*Id.*)

6 There are over 140 similar cases nationwide, with more than 20 in the Western District of  
 7 Washington. (*Id.*) Plaintiff has filed a brief in support of transfer and consolidation before the  
 8 JPML, and the JPML is expected to consider Plaintiff’s brief at a hearing on July 30, 2020. (*Id.*)  
 9 Plaintiff now requests that the Court stay the proceedings in this matter pending a ruling by the  
 10 JPML regarding consolidation and transfer pursuant to 28 U.S.C. § 1407. (*See generally id.*)  
 11 Plaintiff requests that the stay include all discovery and motion practice until seven days after the  
 12 JPML makes a decision regarding transfer and consolidation.

## 13 **II. DISCUSSION**

### 14 **A. Legal Standard**

15 Courts have discretion as to whether they shall grant a stay of proceedings before them.  
 16 *Lockyear v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). The length of a requested stay of  
 17 proceedings must be balanced against the strength of justification for it. *Mediterranean Enters.,*  
 18 *Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).<sup>1</sup> In these circumstances, the court  
 19 weighs the competing interests affected by granting or denying a motion to stay. *See Lockyear*,  
 20 398 F.3d at 1110. The competing interests are (1) the damage that might result from granting a  
 21 stay; (2) the hardship a party may suffer in being required to move forward; and (3) whether a  
 22 stay would promote the orderly course of justice by the simplification or complication of the

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 24 <sup>1</sup> The Ninth Circuit stated, a court may “with propriety, find it is efficient for its own docket and  
 25 the fairest course for the parties to enter a stay of an action before it, pending resolution of  
 26 independent proceedings which bear upon the case.” *Dependable Highway Exp., Inc. v.*  
*Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007); *see Yong v. Immigration &*  
*Naturalization Serv.*, 208 F.3d 1116, 1119 (9th Cir. 2005); *Hines v. D’Artois*, 531 F.2d 726, 733  
 (5th Cir. 1976).

1 issues.. *Id.* This rule does not require the issue in the separate proceedings necessarily be  
2 controlling of the actions before the court. *See Leyva v. Certified Grocers of California Ltd.*, 593  
3 F.2d 857, 863-64 (9th Cir. 1979). Furthermore, a court has the ability to control the nature of the  
4 cases on its docket in the interests of the economic concerns of time and effort for counsel and  
5 litigants. *See Amadeck v. Capital One Fin. Corp.*, Case No. C12-0244-RSL, Dkt. No. 45 at 2  
6 (W.D. Wash. 2012). This includes the ability to exercise discretion to stay proceedings pending a  
7 JPML decision. *See Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997).

#### 8 **B. Prejudice to Parties**

9 The Court finds that the factors set forth above favor granting a stay of proceedings. A  
10 stay will only cause a delay of a matter of weeks because the JPML is due to make a ruling  
11 regarding transfer and consolidation by mid-August. (*See* Dkt. No. 12 at 4.) Defendant has not  
12 shown it will suffer any hardship if the stay is granted. Should the JPML decline to transfer and  
13 consolidate the case, Defendant's motion to strike will be immediately ready for the Court's  
14 consideration upon the expiration of the stay. (*See* Dkt. No. 11.)

15 Furthermore, denying Plaintiff's motion will likely cause hardship to Plaintiff. Absent a  
16 stay, Plaintiff will not have the opportunity for the JPML to decide whether this case ought to be  
17 transferred and consolidated. Plaintiff's counsel represents about 20 other claimants in similar  
18 COVID-19 related cases in the Western District of Washington, several of which have already  
19 been granted stays pending the JMPL's decision. (*See* Dkt. No. 12 at 5.)

#### 20 **C. Interests of Judicial Economy**

21 A stay will promote the interests of judicial economy. The JPML is expected to make a  
22 ruling by mid-August, and the duration of the stay would be approximately six weeks. It would  
23 be wasteful for the parties to engage in discovery or further motions practice pending the JPML's  
24 decision, as transfer and consolidation of this the action would mean those efforts would need to  
25 be repeated in a coordinated manner with other actions in a separate forum. The July 30 JPML  
26 hearing is only 30 days after the noting date of Defendant's motion to strike. In the interests of

1 conserving judicial resources pending the JPML decision, it is prudent to grant the Plaintiff's  
2 motion.

3 **III. CONCLUSION**

4 For the foregoing reasons, Plaintiff's motion for a stay of proceedings (Dkt. No. 12) is  
5 GRANTED and this case is hereby STAYED until further order of the Court. The parties are  
6 ORDERED to file a joint status report apprising the Court of the JPML's decision and the  
7 necessity for continuing the stay no later than seven days from the date the JPML's decision is  
8 issued.

9 DATED this 7th day of July 2020.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE